Department of Justice

FOR IMMEDIATE RELEASE
MAY 24, 1963

The Department of Justice today asked that Governor George Wallace of Alabama be enjoined from interfering with the enrollment of qualified Negroes at the University of Alabama.

Attorney General Robert F. Kennedy said the complaint was filed to get an immediate court test of Governor Wallace's announced position of "legal resistance and legal defiance" to Federal court orders admitting Vivian J. Malone and David M. McGlathery to the University on June 10. Governor Wallace has stated he will personally bar their enrollment.

The complaint was filed in United States District Court for the Northern District of Alabama, in Birmingham, where District Judge H. Hobart Grooms on May 21, ordered Miss Malone and Mr. McGlathery admitted to the University under a 1955 order of the court.

Shortly after Judge Grooms ruled, Governor Wallace publicly stated he would be present to bar the entrance of any Negro attempting to enroll in the University to test his "constitutional standing" as governor and as "direct representative" of the people of Alabama.

"Governor Wallace recently filed an action in the Supreme Court of the United States to test the legality of the President's authority to send troops to Alabama during the recent disturbances in Birmingham," Attorney General Kennedy said.

"We welcomed this because the courts are the proper forum for settling disputes of this sort. We are prepared to obey the court's decision in the case.

"Two Negroes are scheduled to enter the University of Alabama next month under United States District Court orders. Governor Wallace has announced that by personally interfering with and blocking the court's order he seeks to raise new legal questions.

"While these 'new legal questions' sound like the long discredited doctrine of interposition nonetheless the way to determine this is in the courts, not in the streets or not by a confrontation of military or police forces in Alabama.

"The United States has a compelling interest to prevent interference with court orders. Therefore, we filed this complaint today so that the questions of legal defiance and legal resistance, which Governor Wallace would raise, can be resolved before the court's orders take effect.

"We are prepared to abide by the court's decision and we would hope and expect that Governor Wallace will do the same."

The complaint asserted that unless restrained by the court, Governor Wallace will attempt to prevent the enrollment of Miss Malone and Mr. McGlathery thereby impairing the integrity of the judicial process and obstructing justice.

The complaint asked the court for both preliminary permanent injunctions preventing Governor Wallace, his agents, employees, subordinates or successors from interfering in any way with the enrollment and attendance at the University, not only of Miss Malone and Mr. McGlathery but any qualified Negro.

The complaint was signed by the Attorney General; Burke Marshall, Assistant Attorney General in charge of the Civil Rights Division; Macon L. Weaver, United States Attorney for the Northern District of Alabama and St. John Barrett, a Department of Justice attorney.

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA, Plaintiff, v. GEORGE C. WALLACE, Defendant.	CIVIL ACTION NO. _____ COMPLAINT

The United States, as a claim against the defendant, alleges:

1. This action is brought by the United States in its sovereign capacity to safeguard the due administration of justice in its courts and the integrity of its judicial process.

2. This Court has jurisdiction of this action under 28 U.S.C. 1345.

3. George C. Wallace is Governor of the State of Alabama and, as such, has taken an oath to support the Constitution of the United States. He resides Montgomery, Alabama.

4. The University of Alabama is an institution of higher learning, maintained and operated by the State of Alabama. It is administered by a Board of Trustees

consisting of twelve members. The Governor of the State of Alabama is an ex officio member of the Board of Trustees.

5. On July 1, 1955, this Court entered its order in the case of Autherine J. Lucy, et al. v. William F. Adams, No. 652, permanently enjoining the Dean of Admissions of the University of Alabama from denying Negroes the right to enroll in the University and pursue courses of study thereat solely on account of their race or color.

6. On May 16, 1963, this Court, upon application of Vivian J. Malone, a Negro citizen of Alabama, and certain others, entered an order determining that the Court's order of July 1, 1955, in the case of Autherine J. Lucy, et al. v. William F. Adams, No. 652, was still in full force and effect, and that Negroes with applications pending for enrollment in the University of Alabama could apply to this Court for enforcement of the order of July 1, 1955.

7. On May 21, 1963, this Court heard a motion filed on behalf of eleven of the members of the Board of Trustees of the University of Alabama for leave to intervene in the case of Autherine J. Lucy, et al. v. William F. Adams, and to modify and suspend this Court's order of July 1, 1955 as construed on May 16, 1963. In their motion the members of the Board represented that Vivian J. Malone and David M. McGlathery, each a Negro citizen of the State of Alabama and an applicant for enrollment in the University, were qualified to be enrolled under the

terms of this Court's order of July 1, 1955, but requested that implementation of that order be delayed with respect to their admission to the University because of an alleged state of unrest in racial relations in the State of Alabama. The Court, on May 21, 1963, allowed said members of the Board of Trustees to intervene and denied the motion to modify and suspend the order of July 1, 1955.

8. Vivian J. Malone and David M. McGlathery are entitled to be enrolled in and to attend the University of Alabama pursuant to and under the terms of this Court's orders of July 1, 1955, May 16, 1963, and May 21, 1963, in the case of Autherine J. Lucy, et al. v. William F. Adams.

9. On May 21, 1963, following the entry of the order described in paragraph 7, George C. Wallace publicly stated that he would bar the entrance of any Negro who attempts to enroll in the University of Alabama pursuant to the order of this Court. The full text of the written statement of George C. Wallace, as released to the press on May 21, 1963, is attached as an appendix to this complaint.

10. Unless restrained by order of this Court, George C. Wallace will attempt to prevent the enrollment and attendance of Vivian J. Malone and David M. McGlathery and other qualified Negro applicants in the University of Alabama, and will thereby interfere with and obstruct the carrying out of the lawful orders of this Court.

11. Unless an injunction is issued, the plaintiff will suffer immediate and irreparable injury, consisting of the impairment of the integrity of its judicial process, the obstruction of the due administration of justice, and the deprivation of rights under the Constitution and laws of the United States.

WHEREFORE, plaintiff respectfully prays that this Court issue a preliminary injunction during the pendency of this action, and a permanent injunction after trial, enjoining the defendant, his agents, employees, subordinates and successors, together with all persons in active concert or participation with them or any of them, from:

(a) preventing or seeking to prevent, or interfering in any way with, the enrollment and attendance of Vivian J. Malone and David M. McGlathery at the University of Alabama;

(b) obstructing or interfering with, by any means or in any manner, the implementation of this Court's orders of July 1, 1955, May 16, 1963, and May 21, 1963, in the case of Autherine J. Lucy, et al. v. William F. Adams, No. 652, and

(c) otherwise obstructing or interfering with the due administration of justice by the courts of the United States within the State of Alabama.

Plaintiff further prays that the Court grant such additional relief as the interests of justice may require.

ROBERT F. KENNEDY
Attorney General

BURKE MARSHALL,
Assistant Attorney General

MACON L. WEAVER
United States Attorney

ST. JOHN BARRETT, Attorney
Department of Justice

VERIFICATION

St. John Barrett, being first duly sworn, says:

I am an attorney with the Department of Justice and am one of the counsel for the plaintiff in the above action. I am familiar with the contents of the foregoing complaint and all of the allegations of fact which it contains are true to the best of my knowledge, information and belief.

Subscribed and sworn to before me this of May, 1963.

APPENDIX

Federal Judge H. H. Grooms has today issued a ruling which orders the University of Alabama to admit certain Negroes. This is another example of unwarranted interference by some Federal courts with the internal affairs of this state and I resent and reject this new assault upon the liberty and freedom of the people of the State of Alabama and of the nation. Some Federal courts no longer concern themselves with the basic guarantees which the basic framers of the Constitution felt could best be protected by reserving powers to the people to be exercised only through their state government. They have gone to ridiculous extremes to impose an unjust, unworkable, unconstitutional social experiment on the people of this country while blindly ignoring the rights of the white citizens. We must resist these actions which, if left unchallenged, can only lead to the destruction of freedom. If we do not resist we need only to look to the public schools of Washington, D.C. to learn the fate of our public school system. I believe the American people are fast awakening to the perils of the Federal courts enforcing a social ideology instead of the Constitution of the United States.

The probability of Judge Grooms' ruling as he did today was discussed with me by the members of the Board of Trustees in my office. At that time the Board voted to admit the Negroes in the event Judge Grooms ruled in their favor and refused to stay his order pending an appeal. I voted against the admission of any Negroes under any circumstances and urged the Board to appeal any such decision. The ruling of Judge Grooms will be appealed.

The Federal court would not hesitate to jail, imprison and inflict severe punishment against any lesser official than the governor of this state and this, of course, includes trustees and other officials of the University of Alabama. The obligations to protect the tradition and sovereignty of this state is my obligation and will be fulfilled by me.

As Governor I am the highest constitutional officer of the State of Alabama. I embody the sovereignty of this state and I will be present to bar the entrance of any Negro who attempts to enroll in the University of Alabama.

There are legal questions which have not been raised and I intend to raise them. The constitutional standing that I possess as Governor and as the direct representative of the people of this state will be tested. I intend to continue to fight to preserve the integrity of the Constitution of the United States. I intend to keep my covenant with the people of the State of Alabama.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA, Plaintiff, v. GEORGE C. WALLACE, Defendant.	)	CIVIL ACTION NO. _____

ORDER TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE

This Court having entered an order on July 1, 1955 in the case of Autherine J. Lucy, et al. v. William F. Adams, No. 652, enjoining the defendant in that case for denying Negroes the right to enroll in the University of Alabama and pursue courses of study thereat solely on account of their race and color; this Court having entered a further order in the same case on May 21, 1963 requiring the admission to the University of Alabama of Vivian J. Malone and David H. McGlathery, each a Negro citizen of the State of Alabama, and

It appearing from the verified complaint of the United States filed herein that on May 21, 1963, George C. Wallace, Governor of the State of Alabama, made a public statement that he would bar the enrollment of

Vivian J. Malone and David M. McGlathery in the University of Alabama pursuant to the orders of this Court, and that such action by George C. Wallace, if carried out, would cause immediate and irreparable injury to the United States consisting of the impairment of the integrity of its judicial process and the obstruction of the due administration of justice,

IT IS ORDERED that George C. Wallace appear before this Court in its courtroom in the United States Post Office and Courthouse, Birmingham, Alabama, on _____, 1963 at _____ _.m. to show cause, if any he has, why a preliminary injunction should not be issued as prayed for in the plaintiff's complaint.

The Marshal shall serve a copy of this order on George C. Wallace forthwith.

Signed this May _____, 1963.

_____
United States District Judge

KENNEDY

Nation Is Urged to Help Avert Racial Turmoil

Continued from Page 1

President Kennedy Addressing the Nation

FOR IMMEDIATE RELEASE JUNE 11, 1963

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

REMARKS OF THE PRESIDENT
ON NATIONWIDE RADIO AND TELEVISION

Good evening my fellow citizens.

This afternoon, following a series of threats and defiant statements, the presence of Alabama National Guardsmen was required on the University of Alabama to carry out the final and unequivocal order of the United States District Court of the Northern District of Alabama. That order called for the admission of two clearly qualified young Alabama residents who happened to have been born Negro.

That they were admitted peacefully on the campus is due in good measure to the conduct of the students of the University of Alabama, who met their responsibilities in a constructive way.

I hope that every American, regardless of where he lives, will stop and examine his conscience about this and other related incidents. This Nation was founded by men of many nations and backgrounds. It was founded on the principle that all men are created equal, and that the rights of every man are diminished when the rights of one man are threatened.

Today we are committed to a worldwide struggle to promote and protect the rights of all who wish to be free, and when Americans are sent to Viet-Nam or West Berlin, we do not ask for whites only. It ought to be possible, therefore, for American students of any color to attend any public institution they select without having to be backed up by troops.

It ought to be possible for American consumers of any color to receive equal service in places of public accommodation, such as hotels and restaurants and theaters and retail stores, without being forced to resort to demonstrations in the street, and it ought to be possible for American citizens of any color to register and to vote in a free election without interference or fear of reprisal.

It ought to be possible, in short, for every American to enjoy the privileges of being American without regard to his race or his color. In short, every American ought to have the right to be treated as he would wish to be treated, as one would wish his children to be treated. But this is not the case.

The Negro baby born in America today, regardless of the section of the Nation in which he is born, has about one-half as much chance of completing a high school as a white baby born in the same place on the same day, one-third as much chance of completing college, one-third as much chance of becoming a professional man, twice as much chance of becoming unemployed, about one-seventh as much chance of earning $10,000 a year, a life expectancy which is seven years shorter, and the prospects of earning only half as much.

MORE (OVER)

This is not a sectional issue. Difficulties over segregation and discrimination exist in every city, in every State of the Union, producing in many cities a rising tide of discontent that threatens the public safety. Nor is this a partisan issue in a time of domestic crisis. Men of good will and generosity should be able to unite regardless of party or politics. This is not even a legal or legislative issue alone. It is better to settle these matters in the courts than on the streets, and new laws are needed at every level, but law alone cannot make men see right.

We are confronted primarily with a moral issue. It is as old as the scriptures and is as clear as the American Constitution.

The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated. If an American, because his skin is dark, cannot eat lunch in a restaurant open to the public, if he cannot send his children to the best public school available, if he cannot vote for the public officials who represent him, if, in short, he cannot enjoy the full and free life which all of us want, then who among us would be content to have the color of his skin changed and stand in his place? Who among us would then be content with the counsels of patience and delay?

100 years of delay have passed since President Lincoln freed the slaves, yet their heirs, their grandsons, are not fully free. They are not yet freed from the bonds of injustice. They are not yet freed from social and economic oppression, and this Nation, for all its hopes and all its boasts, will not be fully free until all its citizens are free.

We preach freedom around the world, and we mean it, and we cherish our freedom here at home, but are we to say to the world, and much more importantly, to each other that this is a land of the free except for the Negroes; that we have no second-class citizens except Negroes; that we have no class or cast system, no ghettoes, no master race except with respect to Negroes?

Now the time has come for this Nation to fulfill its promise. The events in Birmingham and elsewhere have so increased the cries for equality that no city or State or legislative body can prudently choose to ignore them.

The fires of frustration and discord are burning in every city, North and South, where legal remedies are not at hand. Redress is sought in the streets, in demonstrations, parades and protests which create tensions and threaten violence and threaten lives.

We face, therefore, a moral crisis as a country and as a people. It cannot be met by repressive police action. It cannot be left to increased demonstrations in the streets. It cannot be quieted by token moves or talk. It is a time to act in the Congress, in your State and local legislative body and, above all, in all of our daily lives.

MORE

It is not enough to pin the blame on others, to say this is a problem of one section of the country or another, or deplore the fact that we face. A great change is at hand, and our task, our obligation, is to make that revolution, that change, peaceful and constructive for all.

Those who do nothing are inviting shame as well as violence. Those who act boldly are recognizing right as well as reality.

Next week I shall ask the Congress of the United States to act, to make a commitment it has not fully made in this century to the proposition that race has no place in American life or law. The Federal Judiciary has upheld that proposition in a series of forthright cases. The Executive Branch has adopted that proposition in the conduct of its affairs, including the employment of Federal personnel, the use of Federal facilities, and the sale of Federally financed housing.

But there are other necessary measures which only the Congress can provide, and they must be provided at this session. The old code of equity law under which we live commands for every wrong a remedy, but in too many communities, in too many parts of the country, wrongs are inflicted on Negro citizens as there are no remedies at law. Unless the Congress acts, their only remedy is in the street.

I am, therefore, asking the Congress to enact legislation giving all Americans the right to be served in facilities which are open to the public -- hotels, restaurants, theaters, retail stores and similar establishments.

This seems to me to be an elementary right. Its denial is an arbitrary indignity that no American in 1963 should have to endure, but many do.

I have recently met with scores of business leaders urging them to take voluntary action to end this discrimination and I have been encouraged by their response, and in the last two weeks over 75 cities have seen progress made in desegregating these kinds of facilities. But many are unwilling to act alone, and for this reason, nationwide legislation is needed if we are to move this problem from the streets to the courts.

I am also asking Congress to authorize the Federal Government to participate more fully in lawsuits designed to end segregation in public education. We have succeeded in persuading many districts to desegregate voluntarily. Dozens have admitted Negroes without violence. Today a Negro is attending a State-supported institution in every one of our 50 States, but the pace is very slow.

Too many Negro children entering segregated grade schools at the time of the Supreme Court's decision nine years ago will enter segregated high schools this fall, having suffered a loss which can never be restored. The lack of an adequate education denies the Negro a chance to get a decent job.

(OVER)

MORE

The orderly implementation of the Supreme Court decision, therefore, cannot be left solely to those who may not have the economic resources to carry the legal action or who may be subject to harassment.

Other features will be also requested, including greater protection for the right to vote. But legislation, I repeat, cannot solve this problem alone. It must be solved in the homes of every American in every community across our country.

In this respect, I want to pay tribute to those citizens North and South who have been working in their communities to make life better for all. They are acting not out of a sense of legal duty, but out of a sense of human decency.

Like our soldiers and sailors in all parts of the world, they are meeting freedom's challenge on the firing line, and I salute them for their honor and their courage.

My fellow Americans, this is a problem which faces us all -- in every city of the North as well as the South. Today there are Negroes unemployed two or three times as many compared to whites, inadequate in education, moving into the large cities, unable to find work, young people particularly out of work without hope, denied equal rights, denied the opportunity to eat at a restaurant or lunch counter or go to a movie theater, denied the right to a decent education, denied almost today the right to attend a State university even though qualified. It seems to me that these are matters which concern us all, not merely Presidents or Congressmen or Governors, but every citizen of the United States.

This is one country. It has become one country because all of us and all the people who came here had an equal chance to develop their talents.

We cannot say to ten percent of the population that you can't have that right; that your children can't have the chance to develop whatever talents they have; that the only way that they are going to get their rights is to go into the streets and demonstrate. I think we owe them and we owe ourselves a better country than that.

Therefore, I am asking for your help in making it easier for us to move ahead and to provide the kind of equality of treatment which we would want ourselves; to give a chance for for every child to be educated to the limit of his talents.

As I have said before, not every child has an equal talent or an equal ability or an equal motivation, but they should have the equal right to develop their talent and their ability and their motivation to make something of themselves.

We have a right to expect that the Negro community will be responsible, will uphold the law, but they have a right to expect that the law will be fair; that the Constitution will be color blind, as Justice Harlan said at the turn of the century.

This is what we are talking about and this is a matter which concerns this country and what it stands for, and in meeting it I ask the support of all of our citizens.

Thank you very much.

END

OFFICE OF THE ATTORNEY GENERAL
Washington, D. C.
June 12, 1963

ORDER NO. 297 - 63

Authority of James J. P. McShane to Designate Officers and Employees of the Department of Justice to Perform the Functions of Deputy Marshals in the Northern District of Alabama and to Administer Oaths of Office.

By virtue of the authority vested in me by Section 161 of the Revised Statutes, as amended (5 U. S. C. 22), Section 360 of the Revised Statutes (5 U. S. C. 311), Sections 1 and 2 of Reorganization Plan No. 2 of 1950 (64 Stat. 1261), Section 542 of Title 28 of the United States Code, and Section 206 of the Act of June 26, 1943, 57 Stat. 196 (5 U. S. C. 16a), I hereby authorize James J. P. McShane, Head of the Executive Office of United States Marshals, to perform the function of authorizing and requiring any officer or employee of the Department of Justice to perform the functions of a United States Deputy Marshal for the Northern District of Alabama, to administer the oath of office required by Section 1757 of the Revised Statutes, as amended (5 U. S. C. 16), and to administer any other oath required by law in connection with employment in the executive branch of the Federal Government, in particular the oath required by Section 543 of Title 28 of the United States Code.

The functions assigned to James J. P. McShane and to those officers and employees of the Department of Justice designated by him shall be in addition to the functions presently vested in them.

Robert F. Kennedy
Attorney General

IMMEDIATE RELEASE June 11, 1963

Office of the White House Press Secretary

THE WHITE HOUSE

UNLAWFUL OBSTRUCTIONS OF JUSTICE AND COMBINATIONS IN THE STATE OF ALABAMA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS on June 5, 1963, the United States District Court for the Northern District of Alabama entered an order enjoining the Governor of the State of Alabama, together with all persons acting in concert with him, from blocking or interfering with the entry of certain qualified Negro students to the campuses of the University of Alabama at Tuscaloosa and Huntsville, Alabama, and from preventing or seeking to prevent by any means the enrollment or attendance at the University of Alabama of any person entitled to enroll in or attend the University pursuant to the order of the court of July 1, 1955, in the case of Lucy v. Adams; and

WHEREAS both before and after the entry of the order of June 5, 1963, the Governor of the State of Alabama has declared publicly that he intended to oppose and obstruct the orders of the United States District Court relating to the enrollment and attendance of Negro students at the University of Alabama and would, on June 11, 1963, block the entry of two such students to a part of the campus of the University of Alabama at Tuscaloosa; and

WHEREAS I have requested but have not received assurances that the Governor and forces under his command will abandon this proposed course of action in violation of the orders of the United States District Court and will enforce the laws of the United States in the State of Alabama; and

WHEREAS this unlawful obstruction and combination on the part of the Governor and others against the authority of the United States will, if carried out as threatened, make it impracticable to enforce the laws of the United States in the State of Alabama by the ordinary course of judicial proceedings; and

WHEREAS this unlawful combination opposes the execution of the laws of the United States and threatens to impede the course of justice under those laws;

more (over)

NOW, THEREFORE, I, JOHN F. KENNEDY, President of the United States of America, under and by virtue of the authority vested in me by the Constitution and statutes of the United States, including Chapter 15 of Title 10 of the United States Code, particularly sections 332, 333 and 334 thereof, do command the Governor of the State of Alabama and all other persons engaged or who may engage in unlawful obstructions of justice, assemblies, combinations, conspiracies or domestic violence in that State to cease and desist therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this eleventh day of June in the year of our Lord nineteen hundred and sixty-three, and of the Independence of the United States of America the one hundred and eighty-seventh.

JOHN F. KENNEDY

By the President:

DEAN RUSK

Secretary of State

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FOR IMMEDIATE RELEASE MAY 12, 1963

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I am deeply concerned about the events which occurred in Birmingham, Alabama last night. The home of Reverend A. D. King was bombed and badly damaged. Shortly thereafter, the A. G. Gaston Hotel was also bombed. These occurrences led to rioting, personal injury, property damage and various reports of violence and brutality.

This Government will do whatever must be done to preserve order, to protect the lives of its citizens, and to uphold the law of the land.

I am certain that the vast majority of the citizens of Birmingham, both White and Negro, particularly those who labored so hard to achieve the peaceful, constructive settlement of last week can feel nothing but dismay at the efforts of those who would replace conciliation and good will with violence and hate.

The Birmingham agreement was and is a fair and just accord. It recognized the fundamental right of all citizens to be accorded equal treatment and opportunity. It was a tribute to the process of peaceful negotiation and to the good faithof both parties.

The Federal Government will not permit it to be sabotaged by a few extremists on either side who think they can defy both the law and the wishes of responsible citizens by inciting or inviting violence.

I call upon all the citizens of Birmingham, both Negro and White, to live up to the standards their responsible leaders set last week in reaching the agreement, to realize that violence only breeds more violence, and that good-will and good faith are most important now to restore the atmosphere in which last week's agreement can be carried out. There must be no repetition of last night's incidents by any group.

To make certain that this government is prepared to carry out its statutory and constitutional obligations,

(OVER)

IMMEDIATE RELEASE MAY 13, 1963

Office of the White House Press Secretary

THE WHITE HOUSE

TEXT OF A TELEGRAM TO THE GOVERNOR OF ALABAMA, GEORGE C. WALLACE

May 13, 1963

Honorable George C. Wallace
The Governor of Alabama
Montgomery, Alabama

In response to the question raised in your telegram of last night, federal troops would be sent into Birmingham, if necessary, under the authority of Title 10, Section 333, Paragraph 1 of the United States Code relating to the suppression of domestic violence. Under this section, which has been invoked by my immediate predecessor and other Presidents as well as myself on previous occasions, the Congress entrusts to the President all determinations as to (1) the necessity for action; (2) the means to be employed; and (3) the adequacy or inadequacy of the protection afforded by State authorities to the citizens of that State.

As yet, no final action has been taken under this section with respect to Birmingham inasmuch as it continues to be my hope, as stated last night, "that the citizens of Birmingham themselves will maintain standards of responsible conduct that will make outside intervention unnecessary". Also, as I said last Thursday, in the absence of any violation of federal statutes or court orders or other grounds for federal intervention, our efforts will continue to be focussed on helping local citizens to achieve and maintain a peaceful, reasonable settlement. The community leaders who worked out this agreement with a great sense of justice and foresight deserve to see it implemented in an atmosphere of law and order. I trust that we can count on your constructive cooperation in maintaining such an atmosphere; but I would be derelict in my duty if I did not take the preliminary steps announced last night that will enable this government, if required, to meet its obligations without delay.

s/ John F. Kennedy

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NEWS RELEASE
PLEASE NOTE DATE

DEPARTMENT OF DEFENSE
OFFICE OF PUBLIC AFFAIRS
Washington 25, D. C.

NO. 675-63

FOR THE PRESS: May 13, 1963 OXford 71252

U. S. Army units which were moved on Sunday, May 12 in response to a Presidential directive consisted of:

1. A Special Task Force of battalion-size, composed of elements of the 503rd Military Police Battalion and one company of the 1st Battle Group, 325th Infantry, 82nd Airborne Division, which was airlifted from Fort Bragg, North Carolina to Maxwell Air Force Base, Alabama.

2. One Brigade from the 2nd Infantry Division composed of two Infantry battalions plus supporting aviation, signal and engineer units, of company or platoon size, moved by road from Fort Benning, Georgia to Fort McClellan, Alabama.

END

5/23/63

No. 15 Orig.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

STATE OF ALABAMA, by and through George C. Wallace as its Governor, and GEORGE C. WALLACE in his capacity as Governor of the State of Alabama, PLAINTIFFS

v.

UNITED STATES OF AMERICA and ROBERT S. McNAMARA, individually and as Secretary of Defense of the United States of America

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BRIEF IN RESPONSE TO MOTION FOR LEAVE TO FILE ORIGINAL BILL OF COMPLAINT

ARCHIBALD COX,
Solicitor General

RALPH S. SPRITZER,
LOUIS F. CLAIBORNE,
Assistants to the Solicitor General,

CHARLES DONNENFELD
Attorney

Department of Justice
Washington 25, D. C.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 15 Orig.

STATE OF ALABAMA, by and through George C. Wallace as its Governor, and GEORGE C. WALLACE in his capacity as Governor of the State of Alabama, PLAINTIFFS

v.

UNITED STATES OF AMERICA and ROBERT S. McNAMARA, individually and as Secretary of Defense of the United States of America

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BRIEF IN RESPONSE TO MOTION FOR LEAVE TO FILE ORIGINAL BILL OF COMPLAINT

The defendants oppose the motion for leave to file an original bill of complaint upon two grounds:

1. The complaint in seeking to restrain future action by the President of the United States by a proceeding against the defendant Secretary fails to state a claim upon which relief can be granted because the President has ample constitutional and statutory authority for any action taken or contemplated.

2. The complaint cannot be entertained against the United States because there has been no consent to the suit.

Since the latter ground is not dispositive as to both defendants, leave to file should be denied upon the express ground that the complaint is without substantive merit.

STATUTE INVOLVED

Section 333 of Title 10, United States Code, provides:

> The President, by using the militia or the Armed Forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it--
>
> (1) so hinders the execution of laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail

or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

STATEMENT

Invoking the original jurisdiction of this Court, plaintiffs seek injunctive and declaratory relief against defendants. Specifically, the Court is asked to restrain the defendants and their agents "from deploying troops of the Armed Forces in the State of Alabama to suppress domestic violence unless and until the Legislature of the State of Alabama or the Executive (if the Legislature cannot be convened) makes application for such Armed Forces," and to declare Section 333, as well as the Fourteenth Amendment to the United States Constitution, null and void.

The complaint alleges in substance that the President has directed the Secretary of Defense to send federal soldiers into the State; that, prior to the issuance of this direction, there had been parades, demonstrations and acts of violence in the City of Birmingham; that State officials have taken measures necessary to suppress violence and are willing and able to do so in the future; that State authorities have not sought aid from the Armed Forces of the United States; that in these circumstances the President and the Secretary are without constitutional and statutory authority "to deploy members of the Armed Forces in the State of Alabama for the alleged purpose of using them to suppress domestic violence"; and that irreparable harm will result unless the defendants are restrained as requested.

In summary, then, the complaint challenges the constitutional and statutory powers of the President to invoke and act under Section 333, although, it should be noted, it cites no order of the President invoking that Section and alleges no action by the President or the Secretary beyond the deployment of troops.

We submit that this bare challenge to the President's constitutional and statutory powers should be rejected as without legal foundation. The portions of this Statement which follow are designed solely to set forth

in brief outline the background against which the present controversy has emerged. The facts to which we allude for this purpose are matters of common knowledge.

On or about April 3, 1963, Negroes in the City of Birmingham instituted a series of steps designed to reduce the practice of racial segregation in that city. Various demonstrations followed, and large numbers of arrests were made by local police authorities for alleged violation of a city ordinance prohibiting parades without a permit. On April 10, a State court injunction was issued forbidding racial demonstrations. The demonstrations continued, and by May 8, 1963, more than 2,200 demonstrators had been arrested. On that date, a moratorium on further demonstrations was announced by leaders of the Negro community pending the outcome of discussions with various members of the Birmingham business community. On May 10, the parties to these discussions were reported to have agreed on various voluntary measures designed to ease racial controversy within the city.

On the night of May 11-12, however, two bombings took place. One of these destroyed the home of the Reverend A. D. King, a Negro minister, and another damaged the A. C. Gaston Motel, the headquarters of the Negro campaign, injuring four persons. A serious riot thereupon ensued, during the course of which numerous persons were injured and substantial property damage occurred.

On the evening of May 12, President Kennedy issued a statement reading in pertinent part as follows:

> * * * This Government will do whatever must be done to preserve order, to protect the lives of its citizens and to uphold the law of the land * * *. I have instructed Secretary of Defense McNamara to alert units in Armed Forces trained in riot control and to dispatch selective units to military bases in the vicinity of Birmingham. * * * Finally, I have directed that the necessary preliminary steps of calling the Alabama National Guard into Federal service be taken now so that units of the Guard be available should their services be required.
>
> It is my hope however, that the citizens of Birmingham themselves maintain standards of responsible conduct that will make outside intervention unnecessary and permit the City, the State and the Country to move ahead in protecting the lives and the interests of its citizens in the welfare of our Country.

Following this statement, a number of military units were dispatched to federal bases or installations in Alabama. In all, approximately 3,000 soldiers were sent to Fort McClelland, 60 miles east of Birmingham, and to Maxwell Air Force

Base 90 miles south of the city. In addition, a few (presently three) army personnel are using office space leased to a federal agency in Birmingham, Alabama.

ARGUMENT

THE COMPLAINT AGAINST THE SECRETARY FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Introduction and Summary

We believe that the complaint against the defendant McNamara, insofar as it is justiciable, is within the original jurisdiction of this Court.[1/] Article III, Section 2 of the United States Constitution and 28 U.S.C. 1251 confer upon the Court original jurisdiction of all actions by a State against a citizen of another State.[2/] The allegation that this defendant's action is in excess of constitutional or statutory authority is apparently sufficient to make the suit one against him as an individual rather than a suit against the United States without its consent. Compare Youngstown Co. v. Sawyer 343 U.S. 579; see, also, Ex parte Young, 209 U.S. 123; Larson v. Domestic & Foreign Corp., 337 U.S. 682; Malone v. Bowdoin, 369 U.S. 643.

We also believe it appropriate, even though this Court's original jurisdiction in the matter is not exclusive, to have questions raised by a State as to the scope of the President's power and duty, under the Constitution and acts of Congress, to use federal troops in the preservation of order and for the protection of constitutional rights decided directly by the highest tribunal. A prompt decision authoritatively determining the powers of the President may reduce the danger of domestic violence and of unlawful combinations and conspiracies depriving citizens of constitutional rights that a State

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1/ The action cannot be maintained against the United States for want of its consent to suit. The decisions of this Court have firmly established the applicability of the doctrine of sovereign immunity to a suit by a State against the federal government. Ever since Kansas v. United States, 204 U.S. 331, this principle has been accepted without qualification. See, e.g., Minnesota v. United States, 305 U.S. 382, 387 ("The exemption of the United States from being sued without its consent extends to a suit by a State", Brandeis, J.), and Arizona v. California, 298 U.S. 588. It has only recently been confirmed in Hawaii v. Bell, October Term, 1962, No. 12 Original, decided April 29, 1963.

2/ The defendant McNamara is a citizen of Michigan.

may be unable or unwilling to protect. We accordingly urge the Court, in its disposition of the plaintiffs' motion, to make it clear that the President is not without power, should future eventualities require it, to take upon his own initiative those steps authorized by Section 333 in order to safeguard the constitutional rights of citizens of the United States.

While agreeing, for the reasons just stated, that this Court should decide the legal issues presented, we nevertheless believe that the motion for leave to file the complaint should be forthwith denied, because the case tendered by the State is without merit. There is, of course, ample precedent for rejecting a motion to file a complaint upon that ground. See, e.g., Alabama v. Texas, 347 U.S. 272; California v. Washington, 358 U.S. 64.

Our argument on the merits may be summarized as follows:

A. Section 333 places upon the President the explicit duty to use federal troops, under stated conditions, in order to quell domestic violence or unlawful combinations. There is, and could be, no allegation that the President has acted or intends to act in any manner not authorized by 10 U.S.C. 333 and related statutes. The allegation that Alabama officials have not requested the President to send federal troops and have requested their removal from Alabama is irrelevant because Section 333 requires the President to act upon his own appraisal of conditions even though State officials have not requested federal intervention.

There is no room for judicial review of a Presidential determination that the conditions stated in Section 333 have arisen and require him to take "such measures as he considers necessary." Cf. Martin v. Mott, 12 Wheat. 19, 28-33. A fortiori, a court will not interfere with the entirely preliminary assignment of segments of the Armed Forces to points from which they can be conveniently deployed in the unhappy event that the conditions stated in Section 333 should be found to have arisen. Even more obviously, a court will not interfere in advance, by injunction or declaratory judgment, with the President's performance of his duty to determine whether federal intervention is required and, if so, what measures are appropriate.

B. The attack upon the constitutionality of Section 333 is also unfounded. The United States, although composed of sovereign States, is one nation. Its

people have rights, privileges and immunities under the Constitution and laws of the United States which the federal government has an independent power and duty to protect. As the Court said in In Re Debs, 158 U.S. 564, 582, "The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care." See also Ex parte Siebold, 100 U.S. 371, 395. Section 333 does not purport to confer, and the President does not claim, power to use troops to deal with ordinary domestic violence. The power and duty is to put down any "insurrection, domestic violence, unlawful combination, or conspiracy" which either (1) hinders the execution of State or federal laws with the effect of depriving a part of the people of constitutional rights that the State authorities fail or are unable to protect or (2) obstructs the execution of the laws of the United States. In each event the President's action is tied to the enforcement of federal rights or duties. If a State fails, for whatever reason, to safeguard the fundamental rights of a portion of its people (including the rights to life and the security of person and property), it deprives them, by such action or inaction, of the Fourteenth Amendment's guarantee of equal protection of the laws; and it then becomes the duty of the federal government to act. Section 333 thus implements the Fourteenth Amendment and is plainly a valid execution of the power, conferred in Section 5, to "enforce, by appropriate legislation, the provisions of this Article."

C. Although a rejection of the constitutional claims of the State would make it unnecessary to consider other obstacles to the plaintiffs' claim to relief, we point out additionally that traditional grounds for equitable intervention are lacking. The bare allegation of threatened irreparable harm to the State is unsupported by any averments of fact. And there would be no justification, particularly in the present posture of affairs, for taking the extraordinary step of issuing an injunction or declaration designed to limit the President's choice of a course of action in some future emergency the full nature of which cannot now be foreseen.

A. The preparations made by the Executive and the action apprehended by the plaintiffs' in the event of an emergency are authorized by United States Code, Title 10, Section 333.

Section 333 of Title 10 of the United States Code confers upon the President the power and duty of using federal troops where necessary to suppress domestic violence (or unlawful combinations or conspiracies) that either obstructs the execution of the laws of the United States or deprives any part of the people of a State of constitutional rights that the State is unwilling or unable to protect. It is not, and cannot be, alleged that the Executive contemplates any action not authorized by Section 333; and we assume, therefore, that the gist of the complaint is an attack upon the constitutionality of that section--an issue considered in Point B. Out of an abundance of caution we emphasize here (1) that all of the federal action challenged or apprehended by the complainant is within the express authority granted by law and (2) that neither a President's determination concerning the existence of conditions requiring his intervention under Section 333 nor the measures he might adopt would be subject to judicial review.

1. Alabama complains that the President, citing Section 333, directed the Secretary to post troops at federal installations in Alabama in readiness to be employed by the President in Birmingham if violence should break out anew. But that is precisely the duty placed upon the President by Section 333 in the unhappy event that either of two stated conditions appears, viz.--

(a) the violence (or an unlawful combination or conspiracy) obstructs the execution of federal law; or

(b) the violence (or unlawful combination or conspiracy) so hinders the ordinary processes of law enforcement that a part or class of people are deprived of federal constitutional rights, including the right to equal protection of the laws, which the State authorities are unable, fail or refuse to protect.

The President, in short, has made no claim to authority in the premises other than that conferred by Section 333,[3/] and he has repeatedly expressed the

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3/ The President, of course, has other related powers and duties, not here involved, that future events might require him to exercise; for example, the responsibility of dealing with "unlawful obstructions, combinations or assemblages" that make it impracticable to enforce the laws of the United States by the ordinary course of judicial proceedings. See 10 U.S.C. 332. It is also unnecessary, in view of the specific statutory basis for Presidential action in the present context, to consider the scope of the President's inherent powers. Cf. In Re Debs, 158 U.S. 564.

hope that it will prove unnecessary for him to draw upon these statutory powers. Certainly no court can state in advance that the conditions described in the statute cannot arise.

The allegation that the Alabama authorities have not requested Presidential action is irrelevant. Section 333 shows upon its face that no such request is required to give the President the authority. It is the President who is directed, in the circumstances specified, to use the militia or Armed Forces or to take such other measures "as he considers necessary;" and it is the President alone who has the responsibility of appraising the prevailing conditions and determining whether federal constitutional rights are being impaired by a breakdown of local law enforcement or by a failure to apply the law evenhandedly in suppressing violence. It would have stultified the legislation to make Presidential action contingent upon the concurrence of State officials. The statute, enacted in its original form in 1871 (see discussions in Point B, infra), was aimed not only at situations in which State authorities might be unable to cope with an assualt upon the rights of a group or class of the people but also, as its language attests, at cases in which State officials might "refuse" to act. Congress must have been fully aware that it would be futile indeed to expect State officials who had refused to accord the protection of the laws to a particular class of citizens to invite the federal government to intervene to protect them.

The argument also ignores historic principles. The people of the United States, while citizens of the States, are also citizens of the United States. All of them are entitled to the protection of the United States in the rights, privileges and immunities secured by the Constitution. It is the obligation of the federal government to all classes of people, in the event of a breakdown of local authority, to take the action necessary to preserve order and safeguard them in the exercise of their federal constitutional rights. Section 333 was enacted pursuant to this obligation. See Point B, infra. The power and duty of the national government could not be left dependent upon the wishes of State officials.

It is equally irrelevant to any issue before the Court that the complaint alleges the ability of the State and local authorities to suppress domestic violence. If the local authorities prove able and willing to follow that course and to preserve order in a way that secures for all the people of Alabama the rights, privileges, immunities and protection accorded by the Constitution, then there will be no occasion for Presidential intervention. But the allegations of intent cannot relieve the President of the right and duty to prepare for all contingencies and to make the independent determination required by Section 333.

2. There is no room for judicial review of Presidential action under Section 333. In Martin v. Mott, 12 Wheat. 19, involving a parallel statute (1 Stat. 424) authorizing the President to call forth the militia to execute the laws of the United States, suppress insurrections and repel invasions, the Court unanimously held (pp. 28-29):

> We are all of opinion that authority to decide whether the exigency has arisen belongs exclusively to the President, and that his decision is conclusive upon all other persons. . . . He is necessarily constituted the judge of the exigency in the first instance, and is bound to act according to his belief of the facts. If he does so act, and decides to call forth the militia, his orders for this purpose are in strict conformity with the provisions of the law. . . . 4/

4/ See, also, Luther v. Borden, 7 How. 1, 42, 45; Consolidated Coal & Coke Co. v. Beale, 282 Fed. 934 (S.D. Ohio).

Similarly, Section 333 puts upon the President the power and duty of deciding when an exigency requiring his intervention is required to suppress insurrection or domestic violence obstructing the execution of the federal laws or depriving any class of persons of constitutional rights that the State is unable or unwilling to protect. The express mandate is that the President shall take "such measures as he considers necessary" (emphasis supplied).

The natural meaning of the words is confirmed by the nature of the power and the exigencies in which it is to be exercised. The power is confided to the Chief Executive and Commander-in-Chief. This alone would be a strong indication of the absence of judicial review.[5/]

Furthermore, as in Martin v. Mott, "The power, itself, is to be exercised upon sudden emergencies, upon great occasions of State, and under circumstances which may be vital to the existence of the Union." Upon such occasions there are neither opportunities for judicial review nor criteria for judicial determination.[6/] It needs no argument to demonstrate that decisions to call upon the Armed Forces to repel invasion, to curb insurrection or to suppress domestic violence which destroys the constitutional rights and threatens the lives and safety of a large class of citizens of the United States are of a kind which require an awareness and assessment of facts and information ordinarily available only to the executive branch of the government. It is equally apparent that situations of such danger

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5/ See Prize Cases, 2 Black 635; Dakota Cent. Tel. Co. v. South Dakota, 250 U.S. 163; Orloff v. Willoughby, 345 U.S. 83; cf. Moyer v. Peabody, 212 U.S. 78; Administrative Procedure Act, Sec. 10, 5 U.S.C. 1009.

6/ Compare, Coleman v. Miller, 307 U.S. 433, 454-455, and Baker v. Carr, 369 U.S. 186, 210, where the Court has stated: "In determining whether a question falls within that category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations."

and delicacy may change from hour to hour and that the existence of the power to judge and to act immediately is of the essence. One can conceive of no category of cases which would more surely defy the processes and standards of determination by litigation. 1/

It is even plainer that the Executive alone must decide whether to assign troops to particular federal installations in the interest of preparedness. No intervention in Birmingham has yet taken place and it is greatly to be hoped that the people of that city will solve the difficulties, without disorder, at the local level. Nonetheless, the responsibility for deciding whether to take precautions (as well as the choice of precautionary measures) against a breakdown of local responsibility remains. That power exists entirely apart from Section 333; it is an attribute of the President's constitutional duties as Chief Executive and Commander-in-Chief of the Armed Forces.

Still more obvious, no court will undertake to conjure up in advance the conditions which the President might face on some unborn day and attempt to define for him, by prescient declaration or injunction, the circumstances in which it might become imperative for him to act or the means he should choose.

B. Section 333 is Constitutional

Preliminarily, it will be helpful to correct the fundamental misconception underlying the entire complaint by describing the several statutory sources of Presidential authority to use troops in exigencies created by domestic disorder, and also the quite different constitutional bases upon which the statutes rest. For, contrary to the plaintiffs' mistaken assumption, the constitutional authority for Section 333 is not Article IV, Section 4; it is Article I, Section 8, and Section 5 of the Fourteenth Amendment.

1/ Comparable, though less obvious, cases are presented when a party seeks adjudication of a delicate question affecting the conduct of foreign relations (See Doe v. Braden, 16 How. 635; Terlinden v. Ames, 184 U.S. 270; Oetjen v. Central Leather Co., 246 U.S. 397) or one relating to the duration of hostilities (Commercial Trust Co. v. Miller, 262 U.S. 51).

Congressional authority for Presidential use of federal troops in certain cases of domestic violence and related unlawful combinations or assemblages is found in the three substantive provisions of Chapter 15 of Title 10 of the United States Code. Section 331 provides --

> Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the Armed Forces, as he considers necessary to suppress the insurrection.

Here, clearly, is authorization to come to the aid of a beleaguered State, in the event of insurrection against the State government. This provision implements Article IV, Section 4, which promises the several States that the federal government stands ready to "protect each of them . . . on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence." Quite reasonably, Presidential action in this instance depends upon a local request, both by statute and under the Constitution. The national government has no occasion to interfere, short of an invitation, if the problem is local, the federal laws are being enforced, and no federal rights are in jeopardy.

The second provision is Section 332:

> Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the Armed Forces, as he considers necessary to enforce those laws or to suppress the rebellion.

The contrast between Section 331 and Section 332 is at once apparent. In the situation envisaged by Section 332 there is no question of protecting the State from internal difficulties; the occasion for action is rebellion directed against the United States and the purpose of intervention is to vindicate federal authority and assure enforcement of federal law. The statute accordingly makes no provision for an invitation by State officials. Nor is the State's consent constitutionally requisite.

The reasons are obvious. In the first place, State officers may themselves be parties to the conspiracy against federal authority. See Cooper v. Aaron, 358 U.S. 1. More fundamentally, the President's duty to preserve federal law cannot be dependent on the wishes of any State administration, for his constitutional mandate to "take Care that the Laws be faithfully executed," Art. 2, §3, is not conditioned upon State approval. See Ex Parte Siebold, 100 U.S. 371, 395-396. Probably, as Commander-in-Chief, he had the implied authority to use the Armed Forces of the Nation, including the State militia, to execute the laws of the United States (Art. 2, §2; In re Debs, 158 U.S. 564, 582), but in any event, Congress in 1792 put his power on a statutory footing and beyond question. Act of May 2, 1792, §2, 1 Stat. 264; Act of February 28, 1795, §2, 1 Stat. 424.

Section 332, therefore, is unrelated to Article IV, Section 4. Congress was here invoking its own constitutional power "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections, and repel Invasions." Article I, §8. The United States is not a mere confederation operating by and through the States. "The government of the Union . . . is, emphatically and truly, a government of the people. In form and substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit." McCulloch v. Maryland, 4 Wheat. 316, 405. While under our dual system of sovereignty the powers of government are distributed between the State and the Nation, and while the latter is a government of limited powers, nevertheless within its constitutional sphere the national government has all the attributes of sovereignty and in the exercise of its enumerated powers acts directly upon the citizen and not through the intermediate agency of the States. It has the power to command obedience to its laws, and hence the power to keep the peace to that extent. In Re Debs, 158 U.S. 564, 578-579; Lane County v. Oregon, 7 Wall. 71, 76; Ex Parte Siebold, 100 U.S. 371, 395. Section 332 is plainly constitutional.

We turn to Section 333, which provides:

The President, by using the militia or the Armed Forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it --

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

The second paragraph of Section 333 is of a piece with Section 332, and rests upon the same constitutional footing. The first paragraph differs in that the emphasis is upon the protection of constitutional rights, privileges and immunities under the federal union as distinguished from the second paragraph's emphasis upon enforcement of federal legislation. The principle, however, is identical. Both provisions are wholly independent of Article IV, Section 4, for they are concerned not simply with domestic violence and unlawful combinations or conspiracies but with the relationship--the rights and duties--between the national government and the people. Neither makes the President's authority dependent upon the invitation or consent of State authorities. Both are tied to the federal laws and Constitution. As the Court held in In Re Debs, 158 U.S. 564, 582, the power of the national government to enforce its laws and protect the rights of its citizens are not at the mercy of a State. "The entire strength of the nation may be to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care" (Emphasis added).

Specifically, the first paragraph of Section 333 has its foundation in Section 5 of the Fourteenth Amendment which expressly authorizes the

Congress to enforce the Amendment "by appropriate legislation."[8/] Cf. Stauder v. West Virginia; 100 U.S. 303, 311; Virginia v. Rives, 100 U.S. 313, 317-318; Ex Parte Virginia, 100 U.S. 339, 344-346; Monroe v. Pape, 365 U.S. 167, 171-172. Indeed, Section 333 is derived from Section 3 of the Act of April 20, 1871, 17 Stat. 13, 14, which was an act "To Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States and for other Purposes." President Grant, in proposing the measure, explained--

> A condition of affairs now exists in some of the States of the Union rendering life and property insecure and the carrying of the mails and the collection of the revenue dangerous. The proof that such a condition of affairs exists in some localities is now before the Senate. That the power to correct these evils is beyond the control of the State authorities I do not doubt; that the power of the Executive of the United States, acting within the limits of existing laws, is sufficient for present emergencies is not clear.
>
> Therefore I urgently recommend such legislation as in the judgment of Congress shall effectually secure life, liberty, and property and the enforcement of law in all parts of the United States. (7 Richardson, Messages and Papers of the Presidents, 127; House Exec. Doc. No. 14, 42nd Cong., 1st Sess.)

As the text itself reflects, the prime object of the provision was to secure equal protection of the laws to those -- largely former slaves -- to whom the State was unable or unwilling to accord it. See H.R. No. 320, 42nd Cong., 1st Sess.; 98 Cong. Globe 317, 322, 322-335, 339-341, 366-370, 374-376, 384, 390-392, 412-415, 425-429, 436-440, 442-451, 456-461; 99 Cong. Globe App. 71.

Since Alabama challenges Section 333 even before its implementation (which may never occur), it is impossible to foretell exactly what constitutional rights might be put in jeopardy by the failure or inability of the State to suppress domestic violence or unlawful combinations and conspiracies. But the basic right, which might be threatened in various ways, is the Fourteenth Amendment's guarantee of the equal protection of the laws.

8/ The challenge to the validity of the Fourteenth Amendment presents nothing of substance. The vitality of the Amendment is sufficiently attested by the hundreds of cases decided under it for the greater part of a century. In any event, as this Court held in Coleman v. Miller, 307 U.S. 433, and recently reiterated in Baker v. Carr, 369 U.S. 186, 214, the ratification process does not present a justiciable issue. See, also, Leser v. Garnett, 258 U.S. 130, 137.

If anarchy runs riot, life itself is in serious peril, and all the most fundamental rights of liberty and property are threatened. Under normal conditions the attack of one private citizen upon another, or the attack of one group upon another, raises no question of constitutional safeguards. The Constitution secures life, liberty and property and other civil liberties, such as freedom of speech, assembly and association, only against deprivation by government. But when the law and order ordinarily preserved by a State break down in one of its communities, its inhabitants, of whatever race or color, are deprived of the protection of the laws because of the State's unwillingness or inability to perform the sovereign's first and fundamental duty--to provide its people, their property and activities with the protection of the law.

The lack of the equal protection that would offend the Fourteenth Amendment may result in several ways. There is the possibility of some of the cruder forms of discrimination resulting when a State fails to protect a class or part of its people, because of their race or color, against aggression by rioters or unlawful combinations. There is the subtler danger that the conspirators may be permitted to win peace, or order may be preserved, upon terms that deny some part of the people important constitutional freedons guaranteed by the Bill of Rights through the Fourteenth Amendment. Again, the inequality may affect all the people of a particular locality without regard to race or color. Manifestly, there is a lack of equal protection if the State is unable or unwilling to preserve order in one community in a way that safeguards federal constitutional rights, while it maintains the customary peace and order in others.

We need not explore all the possibilities. At this juncture it is enough that the provision is valid on its face. We cannot know whether the occasion for invoking the statute will actually arise. Nor need we examine the precise circumstances which might justify the contemplated intervention. It is sufficiently clear, however, that the prevailing situation in Birmingham may deteriorate in such a way as to require action under Section 333.

Without pretending to foretell the course of events, we must note the danger that the equal protection of the laws will not be secured to all the residents of the beleaguered city without federal assistance. We need conclude only that such an eventuality would authorize the action contemplated by Section 333, and that the constitutionality of such intervention would be beyond doubt.

C. The Complaint Fails to Satisfy Traditional Requirements for the Grant of Equitable Relief.

If, as argued immediately above, the basic attack upon the constitutionality of Section 333 must be rejected as insubstantial, the case is at an end. Nonetheless, we point out additionally that the complaint in this case would in no event warrant the relief sought.

Plaintiffs make a bare allegation of threatened irreparable harm but fail to specify at all, much less with particularity, what injury would be suffered.[9/] As already emphasized, the President is authorized to act under Section 333 only to secure federal rights which would otherwise go unprotected. And it cannot be presumed that he would act for any purpose other than that authorized, Martin v. Mott, supra, 12 Wheat. at 32-33. It is difficult to see by what process of reasoning an act of Presidential intervention occasioned by necessity and designed to secure the fundamental rights of citizens of the United States could be deemed a threat of irreparable harm cognizable by a court of equity. Certainly, the State does not suggest that it has any interest contrary to the maintenance of order and the protection of constitutional rights.

The unavailability of injunctive relief is further emphasized by the consideration that the President has not invoked his authority under Section 333 or taken any action other than those preparatory measures which would

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9/ A demonstration of irreparable harm has always been a prerequisite to the grant of equitable relief in the federal courts. Beacon Theatres, Inc. v. Westover, 359 U.S. 500. Moreover, the burden of establishing entitlement to injunctive relief is a particularly heavy one where the suit is against public authority. Yakus v. United States, 321 U.S. 414, 440.

enable him to act with dispatch should future contingencies require it. Whether there will be any future movement of federal troops from federal installations to the City of Birmingham is entirely speculative. Thus, plaintiffs are necessarily forced to the extremity of contending that in no event and in no circumstances would the President be authorized to act upon his own initiative in order to fulfill the duty which Congress has directly imposed upon him. At best, such a contention would be tenable only if the statute were plainly unconstitutional on its face. Since, for the reasons already indicated, this is palpably untrue, certainly the courts will not intervene upon the hypothetical and unwarranted assumption that the President might act in disregard of statutory limitations. No more will the courts attempt to predict the conditions which the Chief Executive may encounter or hamper the exercise of his discretion in deciding upon the appropriate measures of response.

CONCLUSION

The motion for leave to file the complaint should be denied because the challenge to the constitutionality of Section 333 is unfounded and the complaint states no cause of action.

Respectfully submitted.

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